

Amendment No. 1 to SB1408

Harper
Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 1408*

House Bill No. 1829

by deleting all language after the enacting clause and by substituting instead the following language:

SECTION 1. This act shall be known as and may be cited as the "Tennessee Deposit Beverage Container Act".

SECTION 2. As used in this act, unless the context requires otherwise:

(1) "Centralized processing facility" means an automated, high-volume facility that receives and processes empty containers collected at satellite drop-off sites, then issues refunds to the customer electronically;

(2) "Certified redemption center" means an operation that has been certified by the department to accept from consumers, and provide the refund value for, empty deposit beverage containers intended to be recycled and that ensures the empty deposit beverage containers are transferred at no charge to a certified recycling facility;

(3) "Certified recycling facility" means a facility designed for the collection, separation, recovery and sale or reuse of secondary resources that would otherwise be disposed of as municipal solid waste, and that has been certified by the department to pick up, verify, document, process and sell for reuse and remanufacturing, deposit beverage containers that have been redeemed at and collected from certified redemption centers;

(4) "Commissioner" means the commissioner of environment and conservation;

(5) "Comptroller" means the office of the comptroller;

(6) "Consumer" means a person who buys a beverage in a deposit beverage container for use or consumption and pays the deposit;

(7) "Dealer" means a person who engages in the sale of beverages in deposit beverage containers to a consumer for off-premises consumption in the state;

(8) "Department" means the department of environment and conservation;

(9) "Deposit beverage" means beer, ale, or other drink produced by fermenting malt; mixed spirits; mixed wine; tea and coffee drinks regardless of dairy-derived product content; soda; carbonated and noncarbonated water, and all nonalcoholic drinks in liquid form and intended for internal human consumption that are contained in a deposit beverage container;

The term "deposit beverage" excludes the following:

(A) A liquid which is:

(i) A syrup;

(ii) In a concentrated form; or

(iii) Typically added as a minor flavoring ingredient in food or drink, such as extracts, cooking additives, sauces, or condiments;

(B) A liquid which is a drug, medical food, or infant formula as defined by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.);

(C) A liquid which is designed and consumed only as a dietary supplement and not as a beverage as defined in the Dietary Supplement Health and Education Act of 1994 (Public Law 103-417);

(D) Products frozen at the time of sale to the consumer, or, in the case of institutional users such as hospitals and nursing homes, at the time of sale to the users;

(E) Products designed to be consumed in a frozen state;

(F) Instant drink powders;

(G) Seafood, meat, or vegetable broths, or soups, but not juices;

(H) Milk and all other dairy-derived products, except tea and coffee drinks containing such products; and

(I) Unmixed wine and liquor;

(10) "Deposit beverage container" means an individual, separate, sealed container made of glass, aluminum, steel, bimetal, or plastic (including polyethylene terephthalate (PET), high-density polyethylene (HDPE) and all other plastic types and grades) in sizes less than or equal to two (2) liters, and used for containing, at the time of sale to the consumer, a deposit beverage intended for use or consumption in this state;

(11) "Deposit beverage distributor" means a person who is a manufacturer of beverages in deposit beverage containers in this state, or who imports and engages in the sale of filled deposit beverage containers to a dealer or consumer. The term includes federal agencies and military distributors, but does not include airlines and shipping companies that merely transport deposit beverage containers;

(12) "Import" means to buy, bring, or accept delivery of deposit beverage containers from an address, supplier, or any entity outside of the state;

(13) "Importer" means any person who buys, brings, or accepts delivery of deposit beverage containers from outside the state for sale or use within the state;

(14) "Microsite" means a portable, attended "roll-off" trailer designed and equipped to serve as a certified redemption center. Such centers shall be located in the parking lot of a host grocery store or other host retailer, with the host grocery store or retailer receiving a portion of the handling fee. Redemption

refunds may be issued in the form of paper receipts which shall be redeemable inside the host grocery store or retailer;

(15) "Mobile redemption center" means a traveling certified redemption center that offers container redemption to residences or businesses, either on a one-time or regular basis. Such centers may or may not be associated with a dealer or a permanent (i.e., storefront) redemption center;

(16) "On-premises consumption" means to consume deposit beverages by a consumer immediately and within the area under control of the establishment, including bars, restaurants, passenger ships, and airplanes;

(17) "Person" means an individual, partnership, firm, association, public or private corporation, federal agency, the state or any of its political subdivisions, trust, estate, or any other legal entity;

(18) "Redeemer" means a person, other than a dealer or distributor, who demands the refund value in exchange for the empty deposit beverage container;

(19) "Refillable beverage container" means any deposit beverage container which ordinarily would be returned to the manufacturer to be refilled and resold;

(20) "Reverse vending machine" means a mechanical device that accepts one (1) or more types of empty deposit beverage containers and issues cash, electronic credit or a redeemable credit slip with a value not less than the container's refund value. The refund value payments shall be aggregated and then paid if more than one (1) container is redeemed in a single transaction; and

(21) "Satellite drop-off site" means a designated site where participating consumers bring empty containers for processing at a centralized processing facility. Such sites shall be capable of scanning the consumer's convenience card and printing out a bar-coded label for consumers.

SECTION 3.

(a) Beginning on January 1, 2009, every deposit beverage distributor shall pay to the department of revenue a deposit beverage container fee on each glass, plastic, aluminum, steel or bimetal deposit beverage container manufactured in or imported into the state. The fee shall be imposed only once on the same beverage container. In 2009, the fee for the months of January, February and March shall be one half of one cent (0.5¢) per beverage container. Payment of the deposit beverage container fee shall be made monthly based on inventory reports of the deposit beverage distributors.

(b) Payment shall be made by check or money order payable to the "Department of Revenue, State of Tennessee." All inventory reports and payments shall be made no later than the fifteenth day of the month following the end of the payment period of the previous month.

(c) Beginning on April 1, 2009, the amount of the deposit beverage container fee paid to the department of revenue shall increase to two and one-half cents (2.5¢) per container.

(d) Beginning on July 1, 2009, the amount of the deposit beverage container fee paid to the department of revenue shall increase to three cents (3¢), and will remain at that level until changed by an act of the general assembly.

(e) No local government shall impose or collect any assessment or fee on deposit beverage containers for the same or similar purpose that is the subject of this act.

SECTION 4.

(a) By April 1, 2009, all deposit beverage distributors operating within the state shall register with the department and shall notify the department of any change in address or other information previously submitted. After April 1, 2009, any person who desires to conduct business in the state as a deposit beverage

distributor shall register with the department no later than one (1) month prior to the commencement of the business.

(b) All deposit beverage distributors shall maintain records reflecting the manufacture of their beverages in deposit beverage containers as well as the importation and exportation of deposit beverage containers. The records shall be made available, upon request, for inspection by the department; provided, that any proprietary information obtained by the department shall be kept confidential and shall not be disclosed to any other person, except:

(1) As may be reasonably required in an administrative or judicial proceeding to enforce any provision of this act or any rule adopted pursuant to this act; or

(2) Under an order issued by a court or administrative agency hearings officer.

SECTION 5.

(a) There is established in the state treasury the "Deposit Beverage Container Fund", hereinafter "the fund", into which shall be deposited all:

(1) Revenues generated from the deposit beverage container fee;

(2) Revenues generated from the deposit beverage container deposit; and

(3) Accrued interest from this fund; and

(4) Fines and penalties assessed for violations of this act.

(b) Moneys in the fund shall be used to:

(1) Reimburse refund values;

(2) Pay handling fees to certified redemption centers and to stores hosting microsite redemption centers as provided in SECTION 13(b);

(3) Pay certified redemption centers their share of fines collected pursuant to Section 25;

(4) Fund administrative, audit, and compliance activities associated with collection and payment of the deposits and handling fees;

(5) Employ personnel to oversee the implementation of the deposit beverage container fee and deposit program, including permitting and enforcement activities; and

(6) Defray associated office expenses.

(c) Pursuant to Section 26, monies distributed to the deposit beverage container fee and deposit program shall also be used to:

(1) Reimburse counties and Keep Tennessee Beautiful for their respective shares of the County Litter Grants program administered by the department of transportation pursuant to §§ 41-2-123, 57-5-201, and 67-4-402;

(2) Reimburse local governments for any loss in revenue that is not provided for in subdivision (1) of this subsection and that is attributable to the repeal pursuant to §1 of chapter 86 of the Public Acts of 2005 of the tax increases imposed by chapter 307 of the Public Acts of 1981, and extended by chapter 769 of the Public Acts of 1984, chapter 33 of the Public Acts of 1987, chapter 30 of the Public Acts of 1991, chapter 2 of the Public Acts of 1995, and chapter 81 of the Public Acts of 1999;

(3)

(A) Reimburse cities and counties for property tax revenue lost pursuant to an increase, if any, in acreage eligible for classification as agricultural, forest, or open space land under title 67, chapter 5, part 10 from one thousand five hundred (1,500) acres to two thousand (2,000) acres. Such reimbursement to be paid from the property tax reimbursement fund established pursuant to subdivision (3)(B).

(B) There is hereby created a special agency account in the state general fund to be known as the "Property Tax Reimbursement Fund". The property tax reimbursement fund shall be composed of moneys appropriated from the deposit beverage container fund pursuant to this section and Section 26. Expenditures from such fund shall only be made to implement and effectuate the purposes of this subdivision (3). Moneys deposited in such fund shall not revert at the end of any fiscal year and all interest accruing on investments and deposits of the fund shall be returned to and made a part of the fund.

(C)

(i) On or before January 1 of each year, the assessor of property of each county shall certify to the comptroller of the treasury such information as is necessary to identify the parcels of property which have qualified for use value classification pursuant to an increase in acreage eligible for such classification from one thousand five-hundred (1,500) acres to two thousand (2,000) acres under the provisions title 67, chapter 5, part 10. The comptroller of the treasury shall determine the assessed value of each such parcel of property and, on or before March 1 of each year, shall certify to the commissioner of finance and administration the amount of property tax revenue lost by each affected city or county the prior tax year. Upon a request by an affected city or county prior to August 1 of each year, the commissioner of finance and administration shall reimburse the amount so determined from funds available in the property tax

reimbursement fund; provided, however, that no city or county shall be reimbursed for any parcel that becomes ineligible for use value classification within the prior tax year.

(ii) If the amount requested by cities and counties exceeds the amount available for reimbursement in the property tax reimbursement fund, then the amount reimbursed to each city and county shall be allocated proportionately in a manner to be determined by the comptroller. The comptroller shall certify to the commissioner of finance and administration the amount of property tax revenue to be allocated to each requesting city and county.

(4) Monies remaining in the fund after all disbursements and allotments have been made shall be distributed annually as follows:

(A) Fifty percent (50%) to distributors in the same proportion as they paid into the fund;

(B) Thirty-five percent (35%) to each LEA, to be apportioned based on student population, for use in education, including school infrastructure;

(C) Ten percent (10%) to each local government solid waste program, which may include litter and recycling programs, to be apportioned based on population;

(D) Five percent (5%) shall remain in the fund for use in solid waste management, recycling, litter control, and other related programs and activities, such as:

(i) Recycling education and demonstration projects;

(ii) Recyclable market development activities; and

(iii) Handling and transportation of deposit

beverage containers to end-markets.

(d) Moneys deposited in the fund and appropriated to the deposit

beverage container fee and deposit program may be expended to fund activities

authorized by this act. Any revenues deposited in such fund shall remain in

reserve until expended for purposes consistent with this act, and shall not revert

to the general fund on any June 30. Any excess revenues from interest earned

by such revenues shall not revert on any June 30, but shall remain available for

appropriation in subsequent fiscal years. Any unexpended appropriation from

such reserve shall not revert to the general fund on any June 30, but shall remain

available for expenditure in subsequent fiscal years.

SECTION 6.

(a) Beginning March 1, 2009, every deposit beverage distributor shall pay

to the department of revenue a deposit of five cents (5¢) on each glass, plastic,

aluminum, steel or bimetal deposit beverage container manufactured in or

imported into the state. Payment of the deposit shall be simultaneous with, and

according to the same terms as, payment of the deposit beverage container fee

as described in Section 3. All deposit beverage distributors shall submit to the

department of revenue documentation in sufficient detail that identifies:

(1) The number of beverages in deposit beverage containers, by

container size and type, manufactured in or imported to the state; and

(2) The number of such deposit beverage containers, by container

size and type, exported and intended for consumption out of the state

during the reporting period.

(b) The amount due from deposit beverage distributors shall be the net

number of deposit beverage containers manufactured or imported into the state

(the total number of containers manufactured or imported into the state minus the

total number of containers exported for consumption outside the state) multiplied by the sum of the prevailing deposit beverage container fee and the refund value of five cents (5¢). Payment shall be made by check or money order payable to the "Department of Revenue, State of Tennessee". All inventory reports and payments shall be made no later than the fifteenth day of the month following the end of the payment period of the previous month.

SECTION 7. The deposit beverage container fee and deposit program shall be administered by the division of solid waste management within the department of environment and conservation. The commissioner shall create a separate administrative entity within the division of solid waste management, with dedicated positions funded by the deposit beverage container fund.

SECTION 8. The comptroller shall conduct a management and financial audit of the deposit beverage container fee and deposit program for fiscal years 2009-2010 and 2010-2011, and for each fiscal year thereafter ending in an odd-numbered year. The comptroller shall submit the audit report, including the amount of unredeemed refund value and recommendations, to the general assembly and the department no later than twenty (20) days prior to the convening of the next regular session. The costs incurred by the comptroller for the audit shall be reimbursed by the deposit beverage container fund. The comptroller may contract the audit services of a third party to conduct the audit.

SECTION 9. The commissioner and the commissioner of revenue are authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5. Full implementation of the deposit beverage container fee and deposit program shall commence on April 1, 2009.

SECTION 10.

(a) Beginning April 1, 2009, every deposit beverage container sold in this state shall have a refund value of five cents (5¢). Each container shall have the

refund value clearly indicated on it as provided in Section 12. In addition, each container shall encode the refund information within the UPC bar code. This information shall be readable by reverse vending machines and other electronic scanning equipment.

(b) Inventory already in circulation on April 1, 2009, shall be affixed with an adhesive sicker bearing the refund value of the container, the words "Tennessee" or the letters "TN," and a bar code bearing the redemption information. These stickers shall be purchased from the state by the beverage distributors, who will pay the state the deposit value of five cents (5¢) per sticker.

(c) The refund value is the amount of the deposit required. Once a refund value has been applied to a deposit beverage container, the deposit on that container may not be changed, but shall be paid to the state.

(d) The deposit on each filled deposit beverage container shall be paid by the deposit beverage distributor who manufactured or imported the beverage in such deposit beverage container. Payment and reporting of the deposits shall be in accordance with Section 6. The deposits shall be deposited into the deposit beverage container fund as described in Section 5.

(e) Deposit beverage distributors who are required under subsection (d) to pay a deposit shall also pay a deposit beverage container fee and register with the state.

SECTION 11.

(a) Beginning April 1, 2009, every deposit beverage distributor shall charge the dealer or consumer a deposit equal to the refund value for each deposit beverage container sold in Tennessee. The deposit charge shall appear as a separate line item on the invoice. None of the deposit charge shall be subject to any state tax under title 67.

(b) Beginning April 1, 2009, every dealer shall charge the consumer at the point of sale a deposit equal to the refund value for each deposit beverage

container sold in Tennessee, except on beverages intended for on-premises consumption as defined in Section 2. The deposit charge shall appear as a separate line item on the invoice. None of the deposit charge shall be subject to any state tax under title 67.

SECTION 12.

(a) Every deposit beverage container sold in this state shall clearly indicate the refund value of the container and the word "Tennessee" or the letters "TN". The names or letters representing the names of other states with comparable deposit legislation may also be included in the indication of refund value. Other indications may be required as specified in rules.

(b) This section does not apply to any type of refillable glass beverage container which has a brand name permanently marked on it and which has the equivalent of a refund value of at least five cents (5¢) which is paid upon receipt of such container by a dealer or distributor.

SECTION 13.

(a) All dealers, regardless of the square footage of the dealer's place of business, shall post a clear and conspicuous sign at each public entrance to the dealer's place of business, which specifies the name, address, and hours of operation of the closest certified redemption center locations.

(b)

(1) If an area is underserved by certified redemption centers, then the department shall determine the need for a certified redemption center in that area with input from the affected county. The commissioner shall promulgate by rule the definition of an underserved area. If a certified redemption center is deemed necessary, then the department in cooperation with providers of microsite redemption centers and area grocery stores, shall ensure that a microsite redemption center is established outside of a grocery store that agrees to host the placement

of the center. If no other funding is available, monies from the deposit beverage container fund may be used to establish the microsite redemption center.

(2) If a microsite redemption center is established pursuant to subdivision (1), then the handling fee shall be apportioned between the microsite redemption center and the host grocery store as follows:

(A) The microsite redemption center shall receive two and one half cents (2.5¢); and

(B) The host grocery store shall receive one-half cent (0.5¢).

SECTION 14.

(a) Prior to operation, redemption centers shall be certified by the department.

(b) Applications for certification as a certified redemption center shall be filed with the department on forms prescribed by the department.

(c) Municipal, metropolitan, and county governments, nonprofit agencies, dealers, businesses, existing recycling facilities, and individual persons are eligible to apply for certification to operate a certified redemption center.

(d) The department shall consult with the respective counties to determine the number of certified redemption centers needed to adequately serve each county, based on population density, distribution, number of retailers and other factors. The department shall use these findings to determine the optimum number of certifications that may be issued for each county.

(e) The department, at any time, may review the certification of a redemption center. After written notice to the person responsible for the establishment and operation of the certified redemption center, the department, after it has afforded the certified redemption center operator a hearing in accordance with Tennessee Code Annotated, Title 4, Chapter 5, may withdraw

the certification of the center if it finds that there has not been compliance with applicable laws, rules, permit conditions, or certification requirements.

(f) Certified redemption centers shall:

(1) Accept all types of empty deposit beverage containers for which a deposit has been paid;

(2) Verify that all containers to be redeemed bear a valid Tennessee refund value;

(3) Pay to the redeemer the full refund value for all beverage containers, as determined by hand count, electronic scan, or weight according to rules promulgated by the department except as provided by Section 16;

(4) Sort and store the containers for pickup according to rules promulgated by the department;

(5) Accept containers from the public at least eight (8) hours a day, five (5) days a week and shall accept containers on at least one (1) weekend day a week; provided, however, that this subdivision (5) shall not apply to mobile redemption centers;

(6) Ensure each container collected is recycled through a contractual agreement with a certified recycling facility; provided, that this subdivision (6) shall not apply if the certified redemption center is operated by a certified recycling facility; and

(7) Forward the documentation necessary to support claims for payment as stated in Section 18.

(g) Certified redemption centers' redemption areas shall be maintained in full compliance with applicable laws and with the orders and rules of the department, including permitting and certification requirements.

SECTION 15. Reverse vending machines may be used by certified redemption centers to satisfy the requirements of Section 13; provided, that the reverse vending

machines shall accept any type of empty deposit beverage container and pay out appropriate refunds via cash, electronic credit, or a redeemable voucher for those containers that bear a valid Tennessee refund value. If the reverse vending machines are unable to read the Tennessee refund value, then the department shall specify a delayed date after which the reverse vending machines may be used. Certified redemption centers using reverse vending machines shall ensure that such reverse vending machines are routinely serviced to ensure proper operation and continuous acceptance of containers and payment of refunds.

SECTION 16. Certified redemption centers shall refuse to pay the refund value on any broken, corroded, dismembered, flattened deposit beverage container, or any deposit beverage container which:

- (1) Contains a free flowing liquid;
- (2) Does not properly indicate a refund value; or
- (3) Contains a significant amount of foreign material.

SECTION 17.

(a) The department shall pay to each certified redemption center a handling fee of not less than the prevailing beverage container fee for each deposit beverage container redeemed by a consumer that is received by a certified recycling facility; provided, however, that a portion of the handling fee shall be paid to the host grocery store as provided in Section 13(b) if the certified redemption center is a microsite redemption center.

(b) The handling fee shall be paid in addition to the refund value of each such empty beverage container. The department may choose to pay the handling fee and refund value on the basis of the total weight of the containers received by material type and the average weight of each container type.

(c) The state shall pay any handling fees and refund values owed to a certified redemption center, and any handling fees owed to a host grocery store

as provided in Section 13(b), within ten (10) business days after receipt of invoice.

(d) A handling fee and refund value may only be paid once for each container redeemed by a consumer and claimed by a certified redemption center in accordance with Section 14.

SECTION 18.

(a) The department shall pay certified redemption centers handling fees and refund values as described in Section 17, based on collection reports submitted by the certified redemption centers. All certified redemption centers shall submit to the department information on forms prescribed by the department. Information shall include at a minimum:

(1) The quantities and types of containers redeemed and whether quantity was determined in each instance by number of containers, volume, weight, or a combination thereof;

(2) The amount of refunds paid out;

(3) The quantities and types of containers transported to a certified recycling facility and whether quantity was determined in each instance by number of containers, volume, weight, or a combination thereof; and

(4) Copies of transport receipts received from certified recycling facilities or the facilities' agents.

(b) For each transport of a type of collected container, a certified redemption center and the certified recycling facility, or the facility's agent, receiving the containers from the certified redemption center shall use the same method of determining quantity.

(c) The requests for payment by the certified redemption center shall be no more frequent than two (2) times per month.

SECTION 19. Certified recycling facilities, in addition to any other requirements under this act or any other provision of law, shall prepare or maintain the documents involving empty beverage containers, as required by the department.

SECTION 20. The records of the deposit beverage distributor, certified redemption center, and certified recycling facility shall be made available, upon request, for inspection by the department, a duly authorized agent of the department, or the auditor. Any proprietary information obtained by them shall be kept confidential and shall not be disclosed to any other person, except:

(a) As may be reasonably required in an administrative or judicial proceeding to enforce any provision of this act or any rule adopted pursuant to this act; or

(b) Under an order issued by a court or administrative agency hearings officer.

SECTION 21. The department shall convene an advisory committee to assist it in developing any rules needed to implement this act. The department shall select members of the committee so as to obtain input on the state level, as well as assess the impact on each individual county, consumers, recyclers, and the beverage industry. Members of the committee shall be appointed by the commissioner and shall serve at the commissioner's pleasure. A simple majority of the committee members shall constitute a quorum for the purposes of recommending rules and providing input to the commissioner.

SECTION 22. Except as provided otherwise in Section 25, any person who violates any provision of this act or any rule adopted pursuant to this act shall be fined not more than ten thousand dollars (\$10,000) for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this section shall be made through administrative, civil, or criminal actions.

SECTION 23.

(a) If the commissioner determines that any person has violated or is violating any provision of this act, any rule adopted pursuant to this act, or any term or condition of a certification or permit issued pursuant to this act, the commissioner may do any one (1) or more of the following:

(1) Issue a field citation assessing an administrative penalty and ordering corrective action immediately or within a specified time;

(2) Issue an order assessing an administrative penalty for any past or current violation;

(3) Require compliance immediately or within a specified time; and

(4) Commence a civil action in circuit court in the county in which the violation occurred or where the person resides or maintains the person's principal place of business for appropriate relief, including a temporary, preliminary, or permanent injunction, the imposition and collection of civil penalties or other relief.

(b) Any order issued pursuant to this section may include a suspension, modification, or revocation of a certification or permit issued pursuant to this act and shall state with reasonable specificity the nature of the violation.

(c) Any order issued under this act shall become final, unless not later than twenty (20) days after the notice of order is served, the person or persons named therein request in writing a hearing before the commissioner. Any penalty imposed pursuant to this act shall become due and payable twenty (20) days after the notice of penalty is served, unless the person named therein requests in writing a hearing before the commissioner. Whenever a hearing is requested on any penalty imposed pursuant to this act, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the commissioner shall require that the alleged violator or violators appear before

the commissioner for a hearing at a time and place specified in the notice and answer the charges.

(d) Any hearing conducted pursuant to this section shall be conducted as a contested case. If after a hearing held pursuant to this section, the commissioner finds that a violation or violations have occurred, the commissioner shall:

(1) Affirm or modify any penalties imposed or shall modify or affirm the order previously issued; or

(2) Issue an appropriate order or orders for the prevention, abatement, or control of the violation involved, or for the taking of such other corrective action as may be appropriate.

If, after a hearing on an order or penalty contained in a notice, the commissioner finds that no violation has occurred or is occurring, the commissioner shall rescind the order or penalty. Any order issued after a hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation.

(e) If the amount of any penalty is not paid to the department within thirty (30) days after it becomes due and payable, the commissioner may institute a civil action in the name of the state to collect the administrative penalty that shall be a government realization. In any proceeding to collect the administrative penalty imposed, the commissioner need only show that:

(1) Notice was given;

(2) A hearing was held or the time granted for requesting a hearing expired without a request for a hearing;

(3) The administrative penalty was imposed; and

(4) The penalty remains unpaid.

(f) In connection with any hearing held pursuant to this section, the commissioner shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

SECTION 24. The department shall provide quarterly reports on the deposit beverage container fee and deposit program to the general assembly and the governor for the period beginning April 1, 2009, and ending December 31, 2010; and semiannually thereafter. The reports shall contain, but not be limited to:

- (1) Performance indicators;
- (2) Measures of effectiveness, including impacts on litter, measured by volume or weight;
- (3) Organization charts; and
- (4) Position descriptions of every type of position created and actual salaries paid to each employee.

The reports shall include recommended legislation for statutory changes.

SECTION 25. The obligations to accept or take empty beverage containers and to pay the refund value and handling fees for such containers as described in this act apply only to containers originally sold in this state as filled beverage containers. A person who, during any single transaction, tenders to a certified redemption center more than twenty-four (24) empty beverage containers that the person knows or has reason to know were not originally sold in this state as filled beverage containers is subject to the enforcement action and civil penalties set forth in this section. Certified redemption centers must conspicuously display a sign in letters that are at least one inch (1") in height with the following information:

WARNING: Persons tendering containers for redemption that were not originally purchased in this state may be subject to a fine of the greater of one hundred dollars (\$100) per container or twenty-five thousand dollars (\$25,000) for each tender.

A person who violates the provisions of this section is subject to a civil penalty of the greater of one hundred dollars (\$100) for each container or twenty-five thousand dollars (\$25,000) for each tender of containers. Each fine collected pursuant to this provision shall be placed in the deposit beverage container fund and disposed of as follows: fifty percent (50%) of the fine shall remain in the fund to be expended for activities authorized by this act, and fifty percent (50%) of the fine shall be returned to the certified redemption center at which the violation was committed as an incentive to watch for and report fraudulent redemptions.

SECTION 26. At the end of each fiscal year, any refund moneys that remain unclaimed in the fund created pursuant to Section 5 of this act shall escheat to the state, shall not revert to the general fund, and shall be allocated annually as follows:

(1) A sum sufficient shall be allocated to the department of transportation, to be used exclusively for the reimbursement of counties and Keep Tennessee Beautiful (KTnB) for the loss of the existing County Litter Grants program provided for in §§ 41-2-123, 57-5-201, and 67-4-402 and to fund Keep Tennessee Beautiful (KTnB);

(2) Two million dollars (\$2,000,000) shall be allocated to the property tax reimbursement fund;

(3) A sum sufficient shall be allocated to reimburse local governments for any loss in additional revenue that is not provided for in subdivision (1) of this section and that is attributable to the repeal pursuant to §1 of chapter 86 of the Public Acts of 2005 of the tax increases imposed by chapter 307 of the Public Acts of 1981, and extended by chapter 769 of the Public Acts of 1984, chapter 33 of the Public Acts of 1987, chapter 30 of the Public Acts of 1991, chapter 2 of the Public Acts of 1995, and chapter 81 of the Public Acts of 1999; and

(4) Any remaining funds shall be allocated as follows:

(A) Fifty percent (50%) to distributors in the same proportion as they paid into the fund;

(B) Thirty-five percent (35%) to each LEA, to be apportioned based on student population, for use in education, including school infrastructure;

(C) Ten percent (10%) to each local government solid waste program, which may include litter and recycling programs, to be apportioned based on population;

(D) Five percent (5%) shall remain in the fund for use in solid waste management, recycling, litter control, and other related programs and activities, such as:

(i) Recycling education and demonstration projects;

(ii) Recyclable market development activities; and

(iii) Handling and transportation of deposit beverage containers to end-markets.

SECTION 27. The provisions of this act shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to this act unless such funds are specifically appropriated by the general appropriations act.

SECTION 28. Section 1 of Chapter 86 of the Public Acts of 2005 is amended by deleting the language "June 30, 2010, or until June 30 of any year following the enactment of any state or federal law which imposes mandatory deposits by consumers on beverage containers sold in Tennessee," and by substituting instead the language "June 30, 2009,".

SECTION 29. This act shall take effect upon becoming a law, the public welfare requiring it.